

REMARKS/ARGUMENTS

Applicant has reviewed the detailed final Office Action mailed July 20, 2009 (paper no. 20090717). In the outstanding Office Action, 1) the drawings were objected to under 37 CFR 1.83(a), 2) claim 77 was objected to due to informalities, and 3) claims 77, 85, and 99 were rejected under 35 U.S.C. § 102(b). In this paper, claims 77 and 85 have been amended, no new matter has been added. Thus, upon entry of this response, claims 77, 85, and 99 will be pending in this application. Applicant requests reconsideration of the pending claims in view of the following remarks. Further, Applicant believes that there are also reasons other than those set forth below why the pending claims are patentable, and reserves the right to set forth those reasons, and to argue for the patentability of claims not explicitly addressed herein, in future papers.

Drawings

In the outstanding Office Action, the drawings were objected to under 37 CFR 1.83(a) as failing to show every feature of the invention specified in the claims. Specifically, the outstanding Office Action states that “the mechanical timer switch comprising a leg-like extension disposed at a bottom surface of the receptacle must be shown of the feature(s) canceled from the claim(s).” *See* Action, p. 2.

The Examiner is requested to review and approve the proposed changes to the drawings as described below and as illustrated in the amended drawing. Replacement sheets of the affected drawing sheets are attached herewith. The amendments are fully supported in the specification as filed and no new matter has been added.

Fig. 12A has been amended to include and specifically identify an exemplary “leg-like extension” as element 235.

Additionally, Applicant has added the “235” reference to the specification, as noted in the above amendments, to bring the specification into line with the drawings. Approval of the proposed changes is respectfully requested.

Claim Objections

The outstanding Office Action objected to claim 77 due to informalities. Applicant has reviewed claim 77 and corrected the informalities by the present amendments. Applicant believes that the objected to language has been remedied, and notice to that effect is respectfully requested.

Claim Rejections Under 35 U.S.C. §102

In the outstanding Office Action, claims 77, 85, and 99 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,699,900 to Artis (hereinafter referred to as “Artis”). For the following reasons, Applicant respectfully traverses this rejection.

Claims 77, 85 and 99 are Patentable Over Artis

The outstanding Office Action rejected claims 77, 85 and 99 as being anticipated by Artis. Applicant respectfully disagrees.

Regarding claim 77 as amended, recites:

A reusable holder for contact lens cases comprising:
a base;
one or more receptacles formed in said base configured to receive a contact lens case; and
a time keeping device;
wherein the time keeping device comprises an indicator for each one or more receptacles that indicates a period of time that has elapsed since the contact lens case currently in the receptacle was placed therein to denote a need to discard said contact lens case and a contact lens associated with said contact lens case;
wherein said one or more receptacles configured to receive a contact lens case includes:
a contact lens case engagement surface formed on said one or more receptacles configured to lock said contact lens case in said one or more receptacles; and
an actuator formed in said base, wherein said actuator is configured to be triggered and reset said time keeping device when a contact lens case is received in said one or more receptacles;
further comprising at least one contact lens case;

wherein the contact lens case comprises a bottom member having a fluid retaining well with a generally concave shape;

wherein the contact lens case has a top and a bottom; and
wherein the bottom of the contact lens case is placed in the receptacle and then rotated 90 degrees to snap the bottom of the case into the receptacle.
(Emphasis added).

As illustrated above, claim 77 recites a holder configured to retain at least one contact lens case while simultaneously providing a timer that indicates to a user when the useful life of a fluid retaining contact lens and its associated lens case has expired. As noted in the specification, there has been little attention given to the need to replace contact lens storage cases. See Specification, [0157].

In contrast, Artis utterly fails to teach, suggest, or otherwise disclose a number of the recited claim elements. Rather, Artis teaches a contact lens case that operates to display the number of days that a contact lens has been worn by the contact lens wearer. Artis does not teach 1) a receptacle for receiving a contact lens case, 2) a time keeping device, 3) an actuator that automatically resets each time a contact lens case is received, or 4) a contact lens case having a fluid retaining well.

First, in contrast to the claimed elements, Artis fails to teach a receptacle for receiving a contact lens case. The outstanding Office Action argues that “holder 34 is considered a contact lens case.” See Office Action, p. 3. This view is unsupportable based on the disclosure in Artis. As taught in Artis, the holder 34 does not encase the lenses, rather, element 34 of Artis is merely a lens retaining member. Artis, col. 3 lines 1-2. The lens retaining member 34 is made of baskets 36 and 34 configured to retain, but not encase the contact lenses. *Id.*, col. 3 lines 1-12. Rather, the entire system taught in Artis is a contact lens case, as evidenced by the title of Artis and throughout the reference. See Artis, Title. Contrary to the assertion in the outstanding Office Action, individual components of the case taught in Artis cannot be separately considered as a “case.”

Additionally, Artis utterly fails to teach a time keeping device. As noted above, claim 77 recites providing a timer that indicates to a user when the useful life of a fluid retaining contact lens and its associated lens case has expired. In contrast, Artis teaches a contact lens case

including a “counter 40” for counting insertions of the contact lens case cover into the housing. *See* Artis, col. 3 lines 13-16. No timer indicator is taught or suggested in Artis. Rather, Artis teaches a mechanical use counter that indicates the number of times the lens retaining member of the contact lens case is inserted into the housing. *Id.* This indicator is not a reliable timer as multiple uses or insertions of the lens retaining member into the housing in a single day will continue to advance the counter. Similarly, if a contact lens is stored in the contact lens case of Artis for multiple days (if perhaps a user also uses glasses for a prolonged period of time), the taught indicator will remain static and not advance. This teaches away from the claimed elements as such a situation will allow for contamination of the contact lens case of Artis without visual indication to the user.

Furthermore, Artis fails to teach an actuator that automatically resets each time a contact lens case is received. To the contrary, Artis actually teaches away from an automatic resetting of an indicator each time a contact lens case is received. Specifically, Artis teaches that each time the cover is inserted into the housing, the display increases an incremental value in response to contact with the button 42. *Id.*, col. 3 lines 13-31. Assuming the interpretation proposed in the outstanding Office Action, each time the cover is inserted into the housing of the contact lens case, the button would be actuated and the counter would always remain at “1”, which would render the contact lens case of Artis useless. Rather, Artis teaches a counter that records and tracks each time the cover is inserted into the housing of the contact lens case.

Moreover, Artis fails to teach a contact lens case having a fluid retaining well. As noted above, the outstanding Office Action points to the “holder 34 [as being] considered a contact lens case.” *See* Office Action, p. 3. However, contrary to the amended claim 77, the element identified in Artis as the “contact lens case” fails to have a fluid retaining well, as recited. Rather, the holder 34 of Artis includes fluid permeable baskets to retain the contact lens. Artis, col. 3 lines 1-12. In order for the contact lens case of Artis to perform its intended purpose, the baskets that make up the holder must be fluid permeable to allow access of the disinfecting solution to the lenses. *See* Artis, col. 3 lines 36-38. This is contrary to the elements recited in claim 77.

"A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. Consequently, because Artis fails to set forth each and every element of independent claim 77, as explained above, the rejection of independent claim 70 under 35 U.S.C. § 102 based on Artis should be reconsidered and withdrawn.

Similarly, Artis utterly fails to teach, suggest, or otherwise disclose the elements claimed in dependent claim 85. Similar to independent claim 77, independent claim 85 recites a reusable holder for contact lens cases including a base configured to receive a contact lens case, a time keeping device with an indicator that indicates a period of time that has elapsed since the contact lens case currently in the base was placed therein and an actuator that engages a received contact lens case and automatically reset the time keeping device when a contact lens case is inserted into the receptacle. Consequently, the arguments made above are equally applicable to independent claim 85.

Again, "[a] claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. Consequently, because Artis fails to set forth each and every element of independent claim 85, as explained above, the rejection of independent claim 85, and all claims that depend there from, under 35 U.S.C. § 102 based on Artis should be reconsidered and withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant has authorized payment for a one month extension of time with this response. Applicant believes no other fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 08-2623 under Order No. 41364.0043 from which the undersigned is authorized to draw.

Respectfully submitted,

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